DOCUMENT RESUME

ED 433 480 CG 029 344

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TITLE Intersections of Critical Legal Theories: In Search of a Critical Theory of Juvenile Justice.
PUB DATE 1999-04-19
NOTE 25p.; Paper presented at the Annual Conference of the American Educational Research Association (Montreal, Quebec, Canada, April 19-23, 1999.
PUB TYPE Information Analyses (070) -- Opinion Papers (120) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Adolescents; *Civil Rights; Court Litigation; *Critical Theory; Discipline; *Juvenile Justice; Knowledge Representation; Legal Aid; *Minority Group Influences; *Youth Problems

ABSTRACT

Children who are subjected to the juvenile justice system suffer injustices and prejudices similar to those experienced by women and minorities. The main difference is that there is no political group comprised of juveniles who could advocate for a new approach to juvenile justice. This makes them the most vulnerable of all individuals who come into contact with the justice system. Juveniles have virtually no power to overcome the bias and irrationality of school disciplinary procedures, much less legal decisions. Because little consideration is given as to why juveniles end up criminals, the perspective of the juvenile in the process is not considered. Thus, it is difficult to expect juveniles to change their behavior to fit into a society that refuses to protect them when they are victimized, but is all too eager to punish them when they behave in an inevitably violent manner. A critical theory of juvenile justice that incorporates the perspectives and experiences of juveniles who enter the system is needed to salvage the majority of juveniles who find themselves reaching out for help in the only ways they know how--violence and illegal behavior. (JDM)

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ED 433 480

Intersections of Critical Legal Theories:

In Search of a Critical Theory of Juvenile Justice

Presented at AERA

April 19, 1999

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Introduction

In recent years there has been an increasing focus on the "other" in the literature helping us to understand how enemies are created, who is identified as the enemy and why enemies are necessary to society. The literature on enemies intersects several fields from psychology, sociology, and philosophy to groups within the legal academy. Paolo Freire, an educator, not only championed oppressed people, he sought to empower the oppressed by exposing the complementary roles played by both the oppressed and their oppressors. Similarly, James Aho, a sociologist, described a process through which we can better understand the social construction of enemies and the corresponding participation in that process by social insiders. In his book, *Just stories: How the law embodies racism and bias*,[1] Thomas Ross, explores the way the judicial system categorizes litigants as a means of reaching rational, objective, thereby just decisions in particular cases involving society's outsiders such as the poor, racial minorities, women, and children. Thus the creation of any categories, based on perceived differences of one group by another group embodying the social norm, on the surface, leads to predictability, rationality, and certainty in the law, and keeps power from the powerless.

Ross describes a process whereby enforcers of the law are the first to determine if, or when, a law has been broken enabling the enforcer (state authority) to use discretion to decide under what circumstances a rule will be enforced. The use of discretion to decide when an authority figure will enforce a rule is shaped and colored by the authority figure's knowledge, experience and biases. If the authority figure believes a member of a particular group, based on race, ethnicity, gender, or age, is usually guilty by his or her mere presence, then the authority figure will be more likely to target individuals who are members of those groups even for minor infractions.[2]

Feminist legal theorists, such as Deborah Rhode, Ann Scales, Linda McClain, and Patricia J. Williams, and critical race theorists such as Richard Delgado, Francisco Valdez and Mari Matsuda have described, in vivid detail, the effect of a judicial system that Laurence Tribe has described as "out of sync with our changing perceptions of the relationship among law, the state and society."[3] Feminist legal theorists and critical race theorists have long argued for a more contextualized approach that takes into account that judicial decisions change litigants' reality.

Feminist legal theorists advocate for a judicial system that looks at a legal issue from multiple perspectives in an effort to find the best solution to legal conflicts, taking into account the unique facts in specific cases. Such an approach would not ensure a particular result, rather this approach would "encourage[] judges to consider the impact legal

decisions will have on the structure of society"[4] A feminist justice model focuses on the social context within which the conflict arose. But unlike the traditional justice model that focuses on individual rights and the common good as separate and distinct interests always co-existing in tension with each other, the feminist justice model rests on the presumption that the resolution of any conflict will be just if the multiple and varied perspectives of all those affected by the decision are placed in the relevant social context. It is the coupling of the interests of the many individuals in a community with the social context that illuminates the path to the most just result.

Within the traditional justice model, individual rights and the community good are viewed as mutually exclusive interests so that justice is viewed from only one perspective at a time. Such an approach separates the individual from the social context, and leads to results that reflect only one perspective -- that of the dominant culture -- which is based on the similarities among its members, thus alienating and ostracizing those who are different. Under the traditional justice model, it is not difficult to see how some individuals and groups would feel that the system treats them unfairly.

Critical race theorists have argued that a judicial focus on the differences between members of minority groups and the social norm places too much emphasis on the importance of difference, particularly in circumstances where differences, based on race, for example, tend to obscure judicial attempts to preserve and perpetuate existing power structures. We have learned from feminist legal scholars and critical race theorists that legal decisions are made interactively within a social context. When a judge sees himself or herself "as part of the relevant social space,"[5] then the judge must acknowledge that the state plays a part in " perpetuating the structure of society that keeps outsiders helpless and vulnerable.

Children, subjected to the juvenile justice system, suffer injustices and prejudices similar to those experienced by women and minorities as well as members of other excluded groups.

> "For it is the most vulnerable, the most forgotten, whose perspective is least akin to that of the lawmaker or judge or bureaucrat and whose fate is most forcefully determined by the law's overall design--by its least visible, most deeply embedded gaps and reflections."[6]

Aspects of both feminist legal theory and critical race theory can be readily transferred to a critical theory of juvenile justice, but there is no political group comprised of members of the group of juveniles who could advocate for a new approach to juvenile justice.

Therefore, there is no political pressure on society or the justice system to force a change in the way juveniles are treated by the justice system that truly reflects the reality of juveniles, from their perspective. How, then, can children expect to be treated fairly by a justice system that ignores the realities of children?

I will argue in the following sections, that juveniles are the most vulnerable of all individuals who come into contact with the justice system because of their real or implied powerlessness; and because of the bias inherent in the stories about the juvenile told over and over by those in the media, government agencies, such as schools, and, ultimately, in court. The stories incorporating judicial bias and prejudices ensure that decisions affecting the lives of juvenile offenders appear rational, just, and inevitable. In our hierarchical society, juveniles have virtually no power to overcome the bias and irrationality of school disciplinary procedures, much less legal decisions. Because we do not consider why juveniles end up as criminal, we fail to consider the perspective of the juvenile in the process. Therefore, we have no right to expect juveniles to change their behavior to fit into a society that refuses to protect them when they are victimized, but is all too eager to punish them when they behave in an inevitably violent manner, frequently in reaction to unjust decisions and life situations.

II. A Distributive Model of Justice

Iris Young (1990) presents a compelling picture of the short-comings of the existing model of justice based on a distributive paradigm. Young argues that a definition of justice, based on the distribution of goods, keeps the focus on "things, income, and jobs,"[7] but "fails to bring social structures and institutional contexts under evaluation."[8] Through its emphasis on fairness, the distributive paradigm of justice promotes individualism through the social construct of community. The purpose of community is to preserve individual identity (insofar as it does not interfere with the collective identity of the community as a whole) among members of the social group (the community) where sameness equals equality. There is a negative side of community, however, for those who cannot meet the criterion of sameness. Such individuals present a threat to the community's identity.[9] Difference, Young argues, is viewed as opposition to the community's identity and, therefore, difference is viewed as deviance that leads, in turn, to a devaluation of those individuals identified as different. In rejecting the distributive paradigm of justice, Young argues for a model of justice that focuses on the effects of domination and oppression.[10]

Young identifies three issues that are ignored by distributive theories of justice: 1) decision making structures and procedures;[11] 2) division of labor;[12] and culture.[13] The combination of these three elements leads to the domination and oppression, at an institutional level, of those individuals or groups viewed as different. As long as domination and oppression are institutionalized, there can be no movement toward a system based on social justice requiring a comparison of alternative patterns and a determination of which pattern is the most just.[14]

III. Contributions from Feminist Critical Legal Theory

The sameness/difference debate that has occupied a significant place in feminist legal theory is a useful component in the construction of a critical theory of juvenile justice. But prior to exploring the significance in law of the sameness/difference debate, it is necessary to define the appropriate approach or theoretical frame within which notions of sameness/difference can be discussed in a meaningful way.

Part of the sameness/difference discussion must include the role language plays in perpetuating a legal system that easily justifies existing legal doctrines that effectively silence and/or punish particular, identifiable groups of people as outsiders, thereby justifying their oppression. Feminist legal theorists, such as Frug, Minow, Bartlett, and Rhode, have used postmodernism and poststructuralism as the means by which to study the language used by the legal system to construct the social landscape that privileges some and oppresses others.[15]

Language is the vehicle through which the legal system constructs the social reality where justice is done. How an event or the participants are described or characterized throughout the judicial process (the description and characterization of each party begins with the first telling of the event even before the parties find their way into court) frequently determines who will prevail because with each retelling, a social or moral value is placed on the interests of each party. The symbols of language are taught to us early on, and those symbols shape what we see -- what we perceive reality to be. As symbols of meaning, words create a mood and characterize people. Therefore, the individual who shapes the story gives it meaning through the choice of words used to describe the events. The words chosen, then, will determine and construct reality at a given moment.

As some feminist legal theorists have pointed out, the notion that justice is based on equality has led to universality with an emphasis on universal norms as the standard by which justice is measured. The universalist view that a theory of justice must necessarily be directed toward the common good of citizens within the community as a whole "tend[s]

to exclude women or to make women's claims appear deviant when measured against established norms."[16] A universalist approach also tends to discount the significance and/or importance of "differences among social groups"[17] by elevating "social and legal practices"[18] to the status of universal norms when, in fact, those practices are based on partial norms.[19]

Ultimately, the question comes down to what difference does difference make in the social and political scheme?[20] Focusing on this question should lead to a shift in our thinking about the concept of inequality. The shift would allow us to explore inequality as "systemic subordination"[21] thus allowing us to comprehend the inherent oppression certain groups suffer within the existing social and political realms. Much feminist critical legal theory urges adoption of a feminist perspective to illustrate how significantly notions of gender have invaded the underlying assumptions of how society is structured and, in turn, how those assumptions have led to legal structures as well as legal decisions which have severely restricted the lives and rights of women.

By accepting as the norm that moral value stems from rationality and objectivity, it is not difficult to conclude that women have much less moral value because in a gendered society, women are relegated to the private sphere when women's lives revolve around home, and childbearing. Society restricts views of women to their sexuality and fragile emotional nature making women unsuitable for participation in the public sphere where decisions about how society will function are made. Such decisions are based on the precept that rationality and objectivity ensure a just society.

Alternatively, men move in both private and public spheres. In the public sphere, men assume a rationality and objectivity that allows them to place a high value on their own moral worth. A moral worth constructed and validated in the private sphere where men assert their authority over their wives and children in a microcosm of public society where their conception of a just society prevails. Extending that perspective from the private sphere to the public sphere, men assume they are capable of determining the best, most just rules governing all social behavior. The presumption is that the rational, male perspective encompasses and reflects all perspectives fairly and equally so that men are uniquely situated to determine which interests have the highest moral worth and therefore, are necessary to achieve the common good. Because men are rational, then, decisions for the common good necessarily are made by men.

Just as some relational feminists argue that rationality and objectivity do not lead to just decisions because decisions that ignore the context in which an event arises, as well as the perspective of each of the participants, cannot be just. Decisions reflecting the decision maker's perspective alone cannot be just because the decision maker's bias and prejudices

interfere with the ability to have a complete knowledge of each of the multiple perspectives of the parties involved.

The tendency in law to separate reason and objectivity from feelings and subjectivity, thereby reifying abstraction over context, has resulted in a legal system that ignores individual stories situated within specific contexts and governed by the facts of particular lives. The result is that, in many instances, individuals subjected to, restricted, and defined by norms based on the characteristics of ones who share no similarities with them cannot avoid future interactions with a legal system that ignores the realities of their lives while forcing the individual to comply with a norm that simply does not fit. While this approach has a severely negative impact on women, it has an even more devastating impact on juveniles who enjoy even less status than do women.

The Violence Epidemic

Public opinion supports the conclusion that American teenagers have become increasingly violent in recent years. That opinion has been shaped by the media, government, and "private youth management interests."[22] According to Males,[23] our collective recollection about the peace and tranquillity of the behavior of teens in years gone by gives the impression that the behavior of the teens of yesteryear was benign. In comparison, today's teens are aggressive and violent. Males states:

> Back when we were kids, the standard grownup head-shaker goes, it was a little running in the hall, talking out of turn, and neighborhood pranks. Then every year, the kids got a little worse and a little worse, and bam ... now it's homeroom crack carnage and schoolyard shoot-outs.[24]

But Males disagrees with the prevailing public opinion that today's teens are much more violent than teens of the 1960s and 1970s. Males contends that the current anti-youth movement has been fabricated by government officials and private mental health organizations motivated not by an interest in societal causes of teen violence and aggression, but by profit.[25]

Further, Males contends that national statistics have been manipulated to misrepresent the incidence of teen crime, unwed births, and deaths due to drunk driving. Both Males and Humes[26] agree that more children are being arrested for violent crimes than ever before, and "a majority of youth in jails, prisons, and detention facilities [are] nonwhite, [and] incarcerated under criminal laws."[27] Both Males and Humes agree that

the public, supported by newer, harsher laws, is demanding a "get tough" approach to juvenile justice. Humes,[28] captures the growing sentiment when he states:

> The system needs to be tougher on kids, imprisoning them longer, focusing more on protecting the public and less on protecting a youthful innocence that no longer seems to exist. For this group, the fix consists of pushing the juvenile justice system back toward the nineteenth-century model, when adults and children were treated exactly the same. Juvenile criminals are more sophisticated and less remorseful than previous generations, [] prosecutors seem to agree. Treating today's child criminals differently from adults ... "flat out isn't working.[29]

As public pressure increases on the justice system to make society safe from teen violence, government agencies seek to protect the financial interests of adults and the mental health system. The more the media interpret statistics in ways that make it appear that today's teens are more uncontrollable and violent than past generations of teens thus distorting the pervasiveness of teen violence by reporting only the most sensational, teenaged outbursts, the more we begin to view teens as deviant and morally unworthy of redemption. When the separation into "us" and "them" is accomplished, we then feel justified in loosening the restraints on state agents to do whatever is necessary to curb teen violence while we concurrently create persuasive arguments against the need for strong protection of the Constitutional rights of juveniles. This process begins early. In fact, long before the juvenile justice system even becomes aware of many juveniles, school officials already have begun to shape the lives of many juveniles who will one day graduate from the school disciplinary system into the juvenile justice system, ultimately finding their way into the adult criminal justice system.

In some instances, schools work in conjunction with the juvenile courts, beginning with truancy proceedings, to ensure an early identification of potential juvenile offenders and a smooth transition of violent and aggressive teens from school disciplinary proceedings to juvenile court proceedings. Sometimes the relationship between the schools and the juvenile court is so intertwined that the Juvenile Court judge uses the school as part of the weapon of punishment by ordering the juvenile to attend school on a regular basis. If the juvenile fails to attend school regularly, because he or she soon realizes that the system is overloaded and there is no one available to enforce the judge's order, the court then uses the teen's truancy as an indication of the teen's disrespect for the

court's authority, thereby justifying a harsher sentence when the Juvenile Court judge finally must sentence an ever increasingly violent teen to real jail time.[30]

Unfortunately for many juvenile offenders, it is the breakdown of the system at the earliest stages that leads to the creation of a hard-core juvenile offender. This occurs when a first offender fails to follow the judge's order, and nothing happens. There is no negative consequence that follows the juvenile's noncompliance because there is no one who actively monitors the juvenile to ensure compliance.[31]

Just as small children test their parents to determine the boundaries of acceptable behavior in the home, teens often test those same boundaries in a broader societal context with the adult authority figures who exert control over them. The goal for small children not only is to learn what mom and dad expect them to do in various situations, but small children also seek their parents' attention--either good or bad. If no moral structure is provided, the negative attention-seeking behavior escalates until someone takes a stand and forces the child either to correct the negative behavior or to take responsibility for the results of the negative behavior.

Children who end up under court supervision frequently come from homes where either or both of the above conditions have not been met. Children from all socio-economic backgrounds require such boundaries, but wealth and privilege do not insure that 1) parents know how to teach their children acceptable behavior; or that 2) parents will pay attention to their children. The difference wealth and privilege make becomes clear when a child from a family considered to be successful, educated, or wealthy presents problems at school or in juvenile court. The outcome is usually less severe or punitive than the punishment for a child from single-parent, low income, under-educated families. The variable treatment, based on wealth, illustrated by Hume, as he recounts the story of a young Asian American juvenile appearing in Juvenile Court with a private attorney, paid for by the juvenile's family, rather than the customary public defender who is provided by the court at no cost to the defendant,[32] vividly demonstrates how some children are saved and others are sacrificed. Two questions arise when this process is carefully examined. First, how are particular juveniles selected for each category, redeemable or expendable?; and second, why should certain juveniles be severely penalized when the system never paid them any attention when they were victims of an abusive family, an uncaring society, and an overwhelmed social service system prior to their reclassification as perpetrator.[33]

The juvenile court is the parent of last resort to many juveniles today. Similar to a nuclear family, there also are two functions that juvenile courts must fulfill as parents of last resort. The first, arguably most important function of the juvenile court, is to teach children what the rules of society are so they may grow up to be independent, functional

adults. Many juveniles are first introduced to the juvenile justice system as young children who have been abused, neglected, or abandoned by their parents. Humes describes the disappointment one young juvenile suffered when he realized that, as a victim of abuse and neglect, he did not qualify for the court's protection because, in these cases, often the court's goal is to preserve the family unit. The child entered the juvenile justice system in the hope of finding protection from a violent or nonexistent home life. Instead, the lesson the child quickly learned was that the file containing his life story, recounting the abuse he had suffered, led not to protection, but to additional abuse when he was returned home and finally placed in foster care where the abuse and neglect continued.[34] The severity of that disappointment fueled deep resentment and mistrust of the system despite the court's rhetoric of acting in the best interests of the child.

The second function of the juvenile court is to punish juveniles who violate the law. The original purposes of the juvenile court were to correct and rehabilitate juveniles. Both categories of youths, abused or neglected children, and juvenile offenders, were viewed as young people in need of protection and rehabilitation. We currently are failing children in both categories by responding to the demands of adults. On one hand, parents demand the right to raise their children without state interference. On the other hand, adult members of society demand protection from young criminals. In either case, juvenile courts are caught between their two functions, protection and rehabilitation, with no perfect solutions on the horizon.

The second lesson juveniles learn in the juvenile justice system is that at some magic moment, the juvenile victim of abuse is transformed into a juvenile offender[35]. When that transformation occurs, the juvenile offender gets a glimpse of the second way juvenile courts ignore the needs of children. Slowly, the lesson is internalized, Juvenile Courts are overwhelmed with a never ending flow of cases. If the crime is not serious, then the Juvenile Court judge merely goes through the official ceremony of noting the incident, and admonishing the juvenile to go to school and stop offending. The judge may even threaten more severe sanctions if the juvenile fails to comply with the judge's order and returns to court a second time. When nothing happens if the juvenile doesn't do as the judge ordered, the juvenile quickly learns that there really is no one actively monitoring his/her activities or compliance with the order. The juvenile begins to think that the Juvenile Court judge doesn't really have the power to interfere in any significant way with the juvenile's life. As a result, the juvenile pushes this boundary, ultimately finding his/her way back into Juvenile Court, frequently in front of the same judge whose orders have been disregarded. This routine continues with the judge imposing more and more sanctions on the juvenile for failing to comply in the first instance. The cycle, however,

comes to an abrupt halt as soon as the juvenile commits a serious crime in which someone is seriously injured or killed[36].

At that moment, the juvenile court takes notice of the juvenile as if for the first time. Except it is not the first time. Now the juvenile's file gains a prominence worthy of the court's attention and the juvenile's status as a victim of abuse over the years of childhood is recast as the cause of the current situation, and the inevitability of the juvenile's perpetrator status is supported by the earlier documentation[37]. Severe punishment is justified based on the rhetoric of inevitability.

Difference as Deviance

By focusing on difference and equating difference with deviance, the legal system can continue to force individuals to submit to existing universal norms as the system seeks to shape individuals to fit the existing social mold. For feminists, the problem with a "modern or masculine jurisprudence"[38] is that an "ethic of justice," with its emphasis on individual rights and communal rules,[39] ignores the lives and narratives of a significant number of individuals. Lawyers and judges within such a jurisprudence seem not even to be aware that there are other stories or lives that require voice. Once judges and lawyers are made aware of others who differ from the norm, such a jurisprudence does not have a mechanism to adjust the application of the law to enhance flexibility which would accommodate individual differences based on a variety of factors. They simply cannot see from the perspective of the "others."

Additionally, applications of an ethic of justice have been interpreted to mean "that the person in the original position is self-referential and in perspective taking assumes that all persons are like that very self."[40] A feminist interpretation of the way the person in the original position responds is "to think from the perspective of everybody, in the sense of each in turn.[41] Thus, the existing legal system, based on rationality and objectivity, excludes anyone who differs from the person in the original position.

Decision makers in the existing legal system presume that their decisions are fair to all because their decisions are based on their own lives and experiences which make their decisions appear fair and just. Those differing from the person in the original position have virtually no chance for fairness because decision makers cannot imagine what the lives of the "others" are like. As Ross (1996) illustrates repeatedly throughout his book,[42] judges bring their own experiences and biases to their decisions. Those experiences and biases invade their decisions in ways that appear rational and objective from the perspective of the decision maker. Those rational and objective decisions make sense only

where those acted upon are members of an excluded class. If the race, gender, or age of the one acted upon is changed to that of the dominant group, the rationality and objectivity of the result quickly unravels because the underlying assumption, that it is legitimate for certain classes of people to be subjected to more supervision and control than other classes of people, disappears.

One especially potent example in Ross's book is that of a welfare mother who finds herself in court facing termination of her AFDC benefits because she refused to allow a social worker, who arrived unannounced, entry into her home, ostensibly to check the continued eligibility of the women to receive AFDC benefits as well as the welfare of the woman's children. Ross points out that because the woman is on welfare, the state assumes that it is justified in monitoring her life without notice, and regardless of the inconvenience to the woman. Using the tool of rhetoric, the court "transforms things into their opposites. Difficult choices become obvious, change becomes continuity. Real human suffering vanishes as we conjure up righteousness."[43]

The truth of Ross's words become clear, when he makes one small, but significant change in the facts. Ross asks whether the judge or society, at large, would continue to justify the actions of the social worker if she attempted to check, unannounced, and in the middle of the night on the welfare of children in a white middle class neighborhood. The righteousness of the state's actions quickly loses its rationale simply by changing the characteristics of the affected family.

The righteousness of the judge's approach in the welfare case is made to appear normal, because such a comparison is never made. The legal narrative crafted by judges is "place[d] ... in a particular place and time."[44] From there judges select which parts of the story to tell.[45] Selective exclusion of certain details, which, if included in the story, would cast a different, possibly more balanced, view of the events, allows judges to structure the reality of the specific events which, in turn, both justifies the specific decision and perpetuates the underlying assumptions about particular groups of people.

This is the same process of creating an enemy described by James Aho[46] in his study of white supremacists in Idaho and Washington who target certain individuals based on particular characteristics that generate hatred in the white supremacists triggering violence toward those targeted. The process of creating enemies, as I have described elsewhere, also applies to the actions of school officials who target certain classes of students for intrusive searches or other punitive actions.[47]

According to Ross, the process begins with the "creation of [an] abstraction."[48] The abstraction allows us to view those designated as "different from the rest of us"[49] and to manufacture generalizations about the moral worth of any group labeled as "different."[50]

We accomplish the division between "us" and "them" specifically to distinguish between our normalcy and their deviance.[51] Ross explains that in law there are certain rhetorical devices used by judges for the purpose of creating an abstraction to justify a legal outcome that would not be considered rational given the social context within which the conflict to be resolved arose.

Ross demonstrates the process of enemy construction in a story about racism using the rhetorical themes of "white innocence,"[52] "special favorites,"[53] and "self imposed stigma."[54] These rhetorical themes of racism are carefully woven into the legal system. They also are themes widely accepted by members of American society. These themes create a "paradox of irrationality and normalcy"[55] at the heart of "unconscious racism"[56] which leads to a conclusion that oppression based on an individual's difference is natural or inevitable.[57] As applied to the discipline of public school students, courts accept the precept that if parents have the right to discipline their children -- to protect them from harm, then school officials, standing in the place of the parents during the school day, have the right to discipline and/or protect students as well. This is especially true for those students characterized as troublemakers. In Juvenile Court, judges select rhetorical themes that are long-accepted by society generally. Such rhetorical themes as: "juvenile villains," where juveniles are characterized as out of control, violent, and dangerous; and "adult innocence," where the actions of school officials are justified as necessary to the preservation of order in the educational environment and for the protection of students and adults from juvenile villains established the necessity for the expansion of Juvenile Court authority as well as the expansion of the authority of school officials that follows.

While the doctrine of *in loco parentis* as applied in the public school context was terminated by the Supreme Court in New Jersey v. T. L. O.,[58] courts continue to apply this doctrine (usually under the guise of the school official's duty to preserve the educational environment) to children who enter the juvenile justice system resulting in the justification of actions by school officials that parents might not take (i.e. searching their children and then turning over evidence of crime to the police). As a result, students are subjected to a court system more concerned about controlling children than salvaging their lives. A child who comes under the province of the Juvenile Court is forced to live with the court's decision regarding the child's future and from which the child has no escape.

When the court bases its decisions on presumptions about the life circumstances of an individual who appears in juvenile court and that individual's potential for successful transition into adult society, the biases of the judges will have a significant impact on the outcome in specific cases. When the judge is swayed by statistics or news stories that portray juveniles as violent and out of control, then the judge is more likely to treat the

juveniles who appear before him or her more harshly. However, this may unfairly penalize most juveniles who enter the juvenile justice system because, according to Males,[59] the reliance on statistics by government agencies and the media, has led to a distorted and overly bleak picture of the rate of violence among teens. Thus, the prevailing story about teens in America is that they are out of control and supremely violent. If government agencies are not given the authority to control teens, then society as we know it will be destroyed.

The Role of Rhetoric and the Use of Magic

> The narratives we bring to the formal rules of law are not just haphazardly chosen, they are inevitably connected with a vision of the world to come. Moreover, this world to come is always one we imagine to be just and righteous.[60]

Judges, as well as others in positions of power, occupy exalted positions in relation to the majority of people. Their exalted positions give them the power to tell the rest of us what the law is, what we as a people should value and protect. They accomplish this through rhetoric plus a little magic.[61] "The simple truth is that law cannot be coherently constructed without a redemptive vision. The question for us is, which vision shall we pursue?"[62] The choice that follows, then, is whose interests shall the law redeem? That choice is made when the judge identifies the rhetorical theme(s) which sets the course the judicially constructed narrative will follow. The goal is to make the rhetorical theme "intellectually coherent."[63] To ensure the acceptance of the rhetorical theme, the decision maker creates a story, a narrative, describing the conflict. To the constructed narrative, the decision maker adds his/her own interpretive theory. The purpose of the interpretive theory is to create an abstraction that separates the rhetorical theme from its social context.[64] The result is that the rhetorical theme achieves intellectual coherence and leads to the conclusion that the status quo is tolerable, even natural and inevitable.[65] In this way, decision makers are able to avoid the real issue of oppression because the entire issue is recast to create an explanation of social reality from the perspective of the dominant group.

Even when the issue is viewed from "the perpetrator's perspective"[66] where members of the dominant group are characterized as the perpetrators, the abstraction of the theme from the social context allows the decision maker to develop a narrative explaining why members of the dominant group are not responsible for the resulting oppression. If

members of the dominant group are not responsible, then a remedy that would end oppression for a subjugated group would unfairly victimize members of the dominant group. Such a result makes sense only as long as the social context is ignored. That is, the decision maker selects certain details of the story to include in the constructed narrative while omitting other details. The decision maker carefully chooses those details to ensure that the resulting narrative absolves the dominant group of responsibility for another group's oppression.[67]

This approach is being used in cases where students assert Constitutional rights to be protected from the punitive actions of school officials. This approach also ensures that we can always pose the question, who is the real victim? The answer to that question will vary depending on how the interpretive narrative is constructed. The one who constructs the narrative, then, controls the outcome regardless of the existence of a socially constructed, "objective" truth.

Why We Need A Critical Theory Of Juvenile Justice

> Short of heaven, our law will always reflect our imperfect moral worth. We will always possess stories about "the others," those we fear and despise, whoever they may be. And the law will always embody those stories.[68]

As Ross explains, law consists of something more than merely a statement of the rules. Beyond the statutes and judicial opinions, the law incorporates "the choices and actions of the state's agents -- police, prosecutors, judges, and juries -- determine the victim's and the defendant's experience of the law."[69] Ultimately, the meaning of the law is determined in the first instance by the state agent who is the first to encounter a situation requiring application or interpretation of a law to a particular event. It is up to the first state agent who encounters an event to determine if a rule or law has been violated. And if it has, then that state agent determines how the state will respond to that violation.[70] The state agent, therefore, has discretion to determine not only if a law has been violated, but further, how the infraction should be characterized, and also if the infraction should be prosecuted.

Applied in the public school setting, this means that a school official (usually either a teacher or a school administrator, but it could be any school employee such as a custodian, bus driver, school secretary, or the like) is the first state agent to be required to determine what the rules and laws are, how those rules and laws have been interpreted and applied in the past, and how those rules and laws, and their interpretations apply or don't apply to the situation at hand. While most school officials strive to interpret laws in

accordance with established interpretations, initial enforcement decisions are made individually, often in isolation, and without a significant oversight or review mechanism in place to determine if the accusation or subsequent enforcement should have occurred in the first place. Because school officials exercise "virtually unchecked discretion,"[71] it is the school official who is the first to announce to the public what the state's law is. This unchecked, initial process, provides fertile ground for abuse of discretion fueled, at least in part, by individual, personal prejudices that may or may not be acknowledged by the state official. This, Ross explains, means that the "law will always accommodate the separation and subjugation of those whom the powerful fear and despise."[72]

This process gives great power to the state agents furthest removed from the judicial process entrusted to ensure fair and appropriate treatment of accused offenders. It also gives great power to state agents to selectively enforce rules or laws and this has the potential to institutionalize privileged treatment of certain individuals at the expense of the powerless.

Language: Building Blocks of Righteousness

There are at least two things accomplished through the careful selection of the language used to tell the story of the increase in school violence. First, language is used to tell the story of the increase in school violence. First, language is being used by judges to justify the need to treat juveniles harshly for a variety of behaviors.[73] Second, language also is used to establish the innocence of school personnel and other students.[74] However, language also can be used to obscure or ignore the assumptions about and biases against those individuals identified as "other."[75] Examples of the assumptions and biases of courts have to do with the way adults in the school are characterized. In *Montalvo v. Madera USD Board of Education*,[76] school administrators and personnel were described by the court as "professionally trained," "competent and dedicated experts in the field of education."[77]

Such language is designed to elevate school administrators and school personnel to a higher moral level than those over whom they have power. In so doing, courts cleverly begin the process of justifying whatever action the school official took, making that action seem necessary under the circumstances.[78] Juveniles designated as "other" are described as "immature;" "... excitable and prone to be distracted from their tasks."[79] Most telling,

though, is the language the court uses to ensure the rationality of a particular approach explained in its social context. For example, the *Montalvo* Court stated:

> Such intrusions upon broadly defined Constitutional freedoms [of students] are essential when the welfare and continued existence of society are weighed against the freedom of the individual to do as he pleases.[80]

In constructing the narrative of justification, rhetorical themes are identified that characterize certain juveniles as "other." Rhetorical themes also are identified that help the storyteller to create new, innocent victims of juvenile violence, school officials (adults) and academically successful students. The Juvenile Court judge fills the role of storyteller. Being removed from the social context where the event occurred, namely the school, the judge is able to construct the narrative of juvenile violence in schools through language that reflects the values and moral worth of education reflected in numerous court cases involving the rights of students against the school's and society's interest in safety and education.

The language used by the Juvenile Court judge to construct the narrative of the event, the individuals involved, the need for justice, and how justice will be defined, is chosen carefully, revealing the weight the storyteller gives to the interests of each party. The weight of the words judges use in identifying the evil creates the path the judge will follow in redeeming the righteous. The judge's narrative yields a new, constructed truth about juveniles in schools that maintains existing power structures as well as the socially imposed powerlessness of juveniles based on their status and age. The newly constructed "truth" pertaining to the severity and frequency of juvenile violence in public schools shields us from recognizing how the "truth" about juvenile violence really was constructed and how that "truth" embodies our current bias against certain juveniles.

Language: The Tool of Subjugation

On April , 1999, a terrible thing happened at Columbine High School in Littleton, Colorado. Two high school boys took vengeance on 14 students and one teacher, we learned in the next few days, because they were angry at everyone at the school for ignoring them, for treating them as outsiders. And for a moment, everyone's attention was focused on the two boys, the dead, Columbine High School, and Littleton, Colorado.

At the outset, the media focused on the two boys who had killed fellow students in an effort to understand why two seemingly usual teenaged boys would wreak the havoc we

saw in this latest incident of school violence. It was the first time, though, that there was a concerted effort to understand what motivated those two boys to kill so many. For the first couple of days, the media focused its attention on what makes quiet, intelligent, young boys feel alienated from and invisible to their peers and the adults at their school. We learned that boys are in crisis because no one is listening to them or even seeing the pain they try to hide.[81]

The focus on the two teen gunmen lasted a day or two, during which the media, politicians, talk show hosts, and the President all concentrated on finding an explanation why those two boys would have committed such carnage. In the initial aftermath, it seemed that we all knew the solution lay in understanding what could drive those two boys, as well as the preceding teen gunmen, to kill their peers and teachers. However, by the third day after the Littleton, Colorado school killings, the President, politicians, the media, and the public at large, returned to the more familiar response to these events by turning the conversation back to discovering who or what is to blame for these increasingly violent and deadly outbursts by teenaged boys.

Blame rather than responsibility took center stage on talk shows and in the news. There was a renewed call for gun control and more stringent efforts to curb violence in movies as the means of stopping the spread of teen violence. And a third, more insidious component was added to the list of blameworthy. The gunmen themselves were blamed for the violence in Littleton. By blaming the gunmen, we were told that school officials were not responsible for the tragedy because school officials could not have known this incident would happen. They could have not have foreseen that the two boys in Littleton, Colorado would act out violently against their peers. But the question remains whether or not school officials really can escape all responsibility or blame for the teen violence that results from the isolation some boys feel that is nurtured within schools where certain students are ignored because they are not athletes; they are not popular; they are not noticed by anyone.

In the aftermath of Littleton, William Pollack has received national attention for his book, *Real boys: Rescuing our sons from the myths of boyhood.* In an interview on CNN in the days that followed the Littleton shootings, Dr. Pollack stated that there is a "national crisis of boys in America that we do not talk about, we don't reach out to them, they are invisible."[82] Further, Dr. Pollack stated that "we talk about violence in general, ..., we don't talk about the violence in boys."[83] Some boys feel ostracized by their peers as well as the adults around them at school. Those boys come together, in some cases, as "a group of outcasts and they take vengeance on the world."[84]

Pollack's message is clear. Some boys who have been labeled as outcasts by their peers and teachers feel isolated and increasingly angry. At some point, in some boys, the anger boils over into violence because those boys have not learned any other way of expressing their feelings that is consistent with the societal message that boys and men cannot show emotion or acknowledge feelings of vulnerability. According to Pollack, boys in America have been taught that to be stoic and strong appropriately demonstrates acceptable male behavior. Unfortunately for some boys, this code of masculinity forces them to internalize their feelings and emotions so that when their frustration and anger builds, the appropriate, socially taught, masculine response is to express that frustration and anger through violence.

Making Schools Safe from Teen Violence

The recent school shootings in Littleton, Colorado have turned our attention again toward understanding this increasingly frequent, recurrent tragedy. In the aftermath of the earlier school shootings, we have searched for someone to blame. This latest school shooting has generated discussion that includes consideration of the more personal, localized causes of teen violence in addition to the broader social issues of gun control and violent movies.

Recently, the House Education Subcommittee on Schools and Violence,[85] heard testimony from Dr. Kingory, director of the Hamilton Fish National Institute on School and Community Violence, who offered several approaches that have been successful in curbing juvenile violence. Dr. Kingory testified that alternative education programs alone are not sufficient to address issues of juvenile violence. Such programs can be effective if offered in conjunction with services to the troubled teens. The purpose of education, plus services is to ensure that teens prone to violence not only learn proper, nonviolent behavior, but they also are taught "the small focused skills necessary to change their behavior."[86]

Representative Marge Roukema (NJ) stated that there is no coordination between the juvenile justice system and the school system. She suggests that everyone be brought into the system. That is, the juvenile justice system must work with the mental health department, schools, and the police in order to effectively address the issue of teen violence. When pushed to offer an approach that works, Dr. Kingory told of a San Diego Juvenile Court judge who ordered inter-agency cooperation to facilitate the monitoring of juveniles and students. This example illustrates that an inter-agency approach leaves little room for a juvenile to fall through the crack because there are several agencies monitoring

the juvenile rather than a single agency. While many juveniles interact with several agencies, the difference in the San Diego example is that the Juvenile Court judge oversees the whole process which provides the necessary attention to how each agency is progressing thereby reducing the likelihood that court ordered agency interventions will fall by the wayside.

In addition to exploring new approaches to addressing juvenile violence, the House Subcommittee also heard testimony from a parent, Lyle Welsh, of a student killed in a school shooting. Mr. Welsh contended that the solution begins at home. The problem, according to Welsh, is that parents do not spend enough time at home. Therefore, they are not fulfilling their responsibility of "teach[ing] respect for life and academics."[87] Welsh commented further that parents and schools "have to be in unison. Schools must reinforce the home message" emphasizing "high academic performances."

The climate has shifted with regard to how we will proceed on the issue of teen violence in schools. Littleton is the catalyst that has caused this recent shift. While we still are concerned about easy access to guns and the increased violence portrayed in the media, we have begun to ask more pertinent questions about the immediate causes of teen violence. Rather than turning our focus outward, we have begun to ask what role parents, teachers, schools, and communities play in creating an environment where certain teens feel there is no other option than to kill those who are perceived as the cause of their isolation. That is where the real solution lies. Only by understanding why some teens choose violence as the solution to their pain will we as a society be capable of resolving the growing incidence of school violence.

Conclusion

School shootings will continue as long as we ignore the root causes of the isolation some teens feel in their homes, at school, and in their communities. As long as we continue to believe that violent teens are different, therefore deviant, we can continue to believe that we are not to blame, at least in part, for maintaining the social and legal structures that isolate and punish those identified as "other." Juveniles will be subjected to a system that mirrors an adult system that values social norms and excludes or punishes individual difference. Because the legal system and school systems ignore the perspectives of those individuals who are different, we can expect some teens to continue to act out violently in search of someone who will listen to their calls for attention and understanding. If we do not learn to decode the violence, we will continue to fall victim to that violence. A critical theory of juvenile justice that incorporates the unique perspectives and experiences

of juveniles who enter the system is needed to salvage the majority of juveniles who find themselves reaching out for help in the only ways they know - violence and illegal behavior.

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[1] Ross, T. (1996). *Just stories: How the law embodies racism and bias.*

[2] For a diagram representing the process described by Ross see Michaelis, K., *Searching the enemy: A legal construct of the other*, in the Journal for a Just and Caring Education, April, 1999.

[3] Tribe, L. The curvature of Constitutional space: What lawyers can learn from modern physics. 103 Harv. L. Rev. 1, 3.

[4] Id.

[5] Id. p. 14

[6] Id.

[7] Young, I. (1990). *Justice and the politics of difference*. Princeton University Press: Princeton, NJ (p. 24).

[8] The problem with modern political theory is that it accepts, outright, existing institutional structures as well as the notion that those institutional structures should be evaluated by normative criteria. Acceptance of institutional structures, in turn, "reduce[s] political subjects to a unity and ... value[s] commonness or sameness over specificity and difference." Id. p. 3

[9] Id. p. 12

[10] "Such a shift brings out issues of decision making division of labor, and culture that bear on social justice but are often ignored in philosophical discussions. It also exhibits the importance of social group differences in structuring social relations and oppression; typically, philosophical theories of justice have operated with a social ontology that has no room for a concept of social groups." Id. p. 3.

[11] Decision making structures and procedures originate within corporate and legal structures. Id. p. 23.

[12] "concerns the definition of the occupations themselves." Id. p. 23.

[13] "includes symbols, images, meanings, habitual compartments, stories ... through which people express their experience and communicate with one another." Id. p. 23.

[14] "Rational reflection on justice begins in a hearing, in heeding a call, rather than in asserting and mastering a state of affairs, however ideal. The call to 'be just' is always situated in concrete social and political practices that precede and exceed the philosopher. Id. p. 5.

[15] Frug defines postmodernism as: "a certain style characterized by wordplay; it is a way of seeing language as an agent of social construction; and it is a way of seeing the human subject as decentered, polymorphous, and indeterminate" in Barbara Johnson, Commentary: Response. The postmodern in feminism. 105 Harv. L. Rev. 1076 (1992). Minow states that "Postmodern work, ..., explores the multiplicity of meanings within language itself." Martha Minow, Incomplete Correspondence: An unsent letter to Mary Joe Frug. 105 Harv. L. Rev. 1096, *1099-1100 (1992). Poststructuralism "refers to theories of interpretation that view meanings as a cultural construction mediated by arrangements of language or symbolic form." Deborah Rhode, Feminist critical theories, 42 Stan. L. Rev. 617, *620 n. 8 (1990).

[16] Sunstein, C. (1990). *Feminism and political theory*. University of Chicago Press: Chicago.

[17] Id. at p. 6

[18] Id. at p. 7

[19] Id. at p. 7

[20] "Another consequence is to suggest that the question of equality is not whether there are "differences" between the two groups subject to comparison but is instead what sort of political and social difference the actual difference makes." Id. p. 5-6.

[21] "... the ultimate goal should be to develop an understanding of inequality as the systemic subordination of certain social groups." Id at p. 6.

[22] From the early 1970s... to the early 1980s, decreases ranging from 5 percent to 80 percent were recorded in adolescent murders, violent crime rates, self-destructive and self-inflicted deaths, violent deaths, in general ..., and drug deaths." Males, M. (1996). *The scapegoat generation: America's war on adolescents.* Common Courage Press: Monroe, ME. (p. 29).

[23] Males, M. (1999). *Framing Youth: 10 myths about the next generation.* Common Courage Press: Monroe, ME.

[24] Males, M. (1999). p. 28.

[25] Males, M. (1996).

[26] Humes, Edward. (1996). *No matter how loud I shout: A year in the life of juvenile court.* Touchstone Publ. New York: New York.

[27] Males, M. (1996). p. 31.

[28] Humes, E. (1966).

[29] Humes, p. 166, quoting Peggy Berkstrand, Assistant District Attorney, Los Angeles.

[30] Humes, 1996.

[31] "... kids at every level of the system know the Juvenile Court often can't touch them. 'You talk to youngsters,' ... 'and they tell you repeatedly, that they got away with so much -- that they commit crimes, but aren't arrested or if they are arrested, when they are brought into court, nothing happens. That's common knowledge. If you expect that, you can get away with a helluva lot, that affects your behavior. You start making the kinds of calculations this boy in Juvenile Hall was making." Humes, E. (1996). *No matter how loud I shout: A year in the life of Juvenile Court.* Touchstone. New York: New York. p. 165, quoting Gil Garcetti, Los Angeles District Attorney.

[32] "Judge Dorn is nodding his approval at Oh, a perfectly coifed private practitioner from downtown LA hired by the family. She is a rarity in Juvenile Court, where the vast majority of kids get overworked court-appointed lawyers paid by the state, since most children are legally indigent and their parents cannot be forced to pay for their legal bills, even the ones that can afford to. Oh has already impressed the judge by filing extensive written motions, affidavits, and favorable psychological profile of John labeling him an ideal candidate for rehabilitation in the juvenile system (an expert opinion paid for by John's parents). All this had been neatly compiled in a bound volume with elaborate indexed tabs-again a rarity. The assembly-line crush of cases is so great that most kids are lucky they meet their lawyers before going to court, much less benefit from carefully researched pleadings... hose who walk into Juvenile Court like Oh, ignoring the peeling paint and futility, treating it instead as if it were the most important forum in the land, find a certain edge in Judge Dorn's court." Humes, p. 100.

[33] Humes, E. 1996, Males, M. 1999; 1996.

[34] "The respected child psychiatrist who evaluated George said the boy would respond well in a stable, structured environment -- something the Juvenile Court, in all the years it controlled George's fate, never managed to give him." Humes, p. 108.

[35] "Despite its brevity, there was a hidden subtext to George's first hearing as an accused delinquent. It had transformed him -- in the eyes of the law, at least -- from a child in danger to a dangerous child. No one blamed the nameless bureaucrats who took an A-B student and sent him to a home troubled by drugs; there is no such accountability in the system. No one asked how a ward of the court could become a gang member without anyone noticing. Only George was held accountable. His status as a 300 ward had ended, his file in dependency court stamped with one large red word: "Terminated." Officially, he

was no longer a victim, he was a criminal, and that is how he would be treated forevermore." Id. at p. 112-113.

[36] Id.

[37] Id.

[38] Linda McClain, Atomistic Man" Revisited: Liberalism, Connection, and Feminist Jurisprudence, 65 S. Cal. L. Rev. 1171, *1174 (1992).

[39] Id. at *1174.

[40] Id. at *1206-1207.

[41] Id. at *1207, quoting S. M. Okin, *Reason and Feeling in Thinking About Justice*, 99 Ethics 229, 244 (1989).

[42] Ross, T., (1996). *Just stories: How the law embodies racism and bias*, Beacon Press: Boston

[43] Id. p. 20.

[44] Id. p. 26.

[45] Id. p. 26.

[46] Aho, J., (1994). *This thing of darkness: A sociology of the enemy.* University of Washington Press: Seattle, WA. See also: Michaelis, K. (1999). Searching the enemy: A legal construct of the other. *Journal for a Just and Caring Education*, Vol. 5 No. 2 April, 1999 209-232, applying Aho's model for constructing enemies to the actions taken by public school officials who search students labeled as troublemakers. When students challenge the actions of school officials in the legal arena, judges have frequently justified the behaviors of school officials in much the same way the court justified the actions of the social worker in Ross's example of the welfare mother.

[47] Id.

[48] Ross, p. 57.

[49] Id.

[50] Id. at 58. See also: Aho, J. (1996); Michaelis, K. (1999).

[51] "The first step, the creation of the abstraction "the poor," is an easily overlooked yet powerful part of the rhetoric of poverty. We are so used to speaking of the poor as a distinct class that we forget the rhetorical significance of doing so. By focusing on the single variable of economic wealth and then drawing a line on the wealth continuum, we create a class of people who are "them," not us. Ross, T. (1996). p. 57-58

[52] Ross, p. 21.

[53] Id. p. 27.

[54] Id. p. 30.

[55] Ross, p. 52.

[56] Id.

[57] Id. at p. 27.

[58] *New Jersey v. T. L. O.*, 469 U. S. 325 105 S. Ct. 733 (1985).

[59] Males, M., (1996). *The scapegoat generation: America's war on adolescence.* Common Courage Press: Monroe, ME.

[60] Id. at p. 17.

[61] Id.

[62] Ross, p. 17

[63] Id. at p. 25.

[64] Id.

[65] Id.

[66] Id. at p. 41

[67] The process begins when the judge identifies the rhetorical themes that will be used to characterize the perpetrator as "other," and to create a new victim who is a member of the dominant group. The judge, acting as storyteller, uses language to tell the story of the event, describing the individuals involved, explaining the need for justice, and determining how justice will be defined. This results in a narrative that contains the constructed "truth"

about the individual, the event, and the community where the event occurred. The narrative establishes the intellectual coherence of the rhetorical theme and leads to the definition of the universal norm defining the boundaries of acceptable behavior, appearance, etc. The universal norm also highlights differences between people thereby creating insiders and outsider where difference is devalued. In a system defined by universal norms, difference is defined as deviance, thus, justifying punishment, in one form or another, for those who are different.

[68] Id.

[69] Id. p. 4.

[70] Id.

[71] Id. p. 6

[72] Id. p. 1

[73] "School officials are keen observers of student conduct, and they need to possess the ability to act quickly when they observe suspicious behavior signaling either the imminent danger of, or the recent occurrence of, a discipline problem that could disrupt the school environment." *Pennsylvania v. Cass*, 551 Pa. 25)Pa. 1998). Teachers and other school officials have significant and direct authority over impressionable young people in school classrooms and corridors. They are paid by the state to determine what is taught and how it is taught. They wield the power to control, evaluate, and discipline student behavior and performances." *Sands v. Morongo Unified School District*, 53 Cal.3d 863, *899 (Cal. 1991). "It is the duty of school administrators to enforce reasonable rules and regulations for the proper conduct of the school system, the students and the educational process in general." *Brouse v. Hipes*, 319 F. Supp. 515 (S. D. Ind. 1970). School official/school district "assumes a duty to protect [students' from dangers posed by anti-social activities -- their own and those of other students -- and to provide them with an environment in which education is possible. To fulfill that duty, teachers and school administrators must have broad supervisory and disciplinary powers." *Tarter v. Raybuck*, 742 F.2d 977, *982 (6th Cir. 1984), citing *Horton v. Goose Creek Independent School District*, 690 F. 2d 470, *480 (5th Cir. 1982).

[74] "... teachers suffering serious injuries at the hands of violent students" "... a teacher ordered an unruly student to her office and as a result, the teacher was viciously pushed against the wall breaking her pelvis." "... a teacher disciplined a student in the corridor; the student came back later with a knife and chain and attacked the teacher." "The legislature sought to preserve a feeling of security in teachers from would-be assaulters, ... and in the students and teachers, from armed attacks from the especially violent who resort to knives, nun-chucks, firearms, and other implements 'capable of inflicting serious bodily injury.'" *In the Interest of D. S.*, 424 Pa. Super. 350, *370-372 (Pa. Super. 1993).

[75] "appellant's history reflects numerous encounters with the law and a rejection of school discipline. *State of Illinois v. Baxtrom*, 81 Ill. App.3d 653, *659 (Ill. App. 1980).

[76] 21 Cal. App.3d 323 (Cal. App. 1971).

[77] Id., at *330.

[78] "... hair regulation is reasonable and rational and reasonably relates to ad serves to enhance the educational function and the health and safety of the pupils of said school district." Id. at *337.

[79] Id. at *331.

[80] Id. at *337.

[81] Pollack, W. (1998). *Real Boys: Rescuing our sons from the myths of boyhood.* Henry Holt and Co.: New York, New York.

[82] Interview with William Pollack on CNN, April 21, 1999.

[83] Id.

[84] Id.

[85] CSPAN, May 18, 1999.

[86] Id.